

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL LEWIS SURLES,

Petitioner,

v.

Case Number 2:20-CV-11526
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

DEWAYNE BURTON,

Respondent,

_____ /

**OPINION AND ORDER TRANSFERRING SUCCESSIVE PETITION FOR
WRIT OF HABEAS CORPUS TO UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT**

Samuel Lewis Surles, (“petitioner”), confined at the Handlon Correctional Facility in Ionia, Michigan, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his *pro se* application, petitioner challenges his 1969 conviction out of the Detroit Recorder’s Court for first-degree murder, Mich. Comp. Laws § 750.316. Because the Court concludes that the present petition constitutes a “second or successive petition” within the meaning of 28 U.S.C. § 2244(b)(3), the Court will transfer the matter to the Court of Appeals so that the petitioner may seek permission to proceed.

I. Background

Petitioner was convicted of first-degree murder in the Detroit Recorder's Court in 1969 and was sentenced to life in prison.

Petitioner previously filed a petition for writ of habeas corpus, in which he challenged his first-degree murder conviction. The petition was denied on the merits.

Petitioner again seeks habeas relief from his incarceration.

II. Discussion

Petitioner already filed a prior petition for a writ of habeas corpus challenging his judgment of sentence and incarceration. The petition was denied on the merits. *Barnes v. Wells*, No. 85-3551 (E.D. Mich. Dec. 5, 1986) (DeMascio, J.), *cert. prob. cause den.*, No. 87-1445 (6th Cir. Aug. 24, 1987). The Sixth Circuit has twice denied petitioner permission to file a second or successive habeas petition. *See In re: Samuel Surles*, No. 97-214 (6th Cir. June 24, 1998), *In Re Surles*, No. 13-1649 (6th Cir. Mar. 26, 2014). Petitioner had another habeas case transferred to the Sixth Circuit, *Surles v. Kapture*, No. 2:00-cv-001 (W.D. Mich. Jan. 24, 2000), which was dismissed for want of prosecution. *In re Surles*, No. 00-1093 (6th Cir. Mar. 7, 2000).

An individual seeking to file a second or successive habeas petition must first ask the appropriate court of appeals for an order authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). When a habeas petitioner files a second or successive petition for habeas corpus relief in the district court without preauthorization from the court of appeals, the district court must transfer the document to the court of appeals. See 28 U.S.C. § 1631 (directing that “[w]hen a civil action is filed in a court ... and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action ... to any other such court in which the action ... could have been brought at the time it was filed”); *In re Sims*, 111 F.3d 45, 47 (6th Cir.1997)(holding that “when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.”); See also *Ward v. Wolfenbarger*, 323 F. Supp. 2d 818, 825-26 (E.D. Mich. 2004).

Petitioner has not obtained authorization from the Sixth Circuit to file this successive petition.

Accordingly, the Clerk of Court is ordered to transfer the habeas petition to the United States Court of Appeals for the Sixth Circuit pursuant to *Sims* and 28 U.S.C. § 1631. See *Galka v. Caruso*, 599 F. Supp. 2d 854, 857 (E.D. Mich. 2009).

III. ORDER

Accordingly, it is **ORDERED** that the Clerk shall transfer the petition to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/Arthur J. Tarnow
HON. ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

DATED: July 8, 2020